

CHAPTER 558**PARTITION OF REAL ESTATE****558.01 ACTION FOR PARTITION OR SALE, WHO MAY BRING.**

Plaintiff and defendant are the owners in common of two improved farms in Blue Earth county, each owning an undivided one-half thereof. The two farms are some distance apart and are separately farmed by tenants of the parties. Defendant had mortgaged his undivided interest in both farms. Plaintiff is the present owner of this mortgage. The court ordered the two farms sold instead of granting partition in kind. There is not a very large difference in the value of the farms. Plaintiff contends that because of the mortgage on defendant's undivided interest the court could not grant partition in kind so as to transfer the lien of his mortgage onto the farm which might be allotted to the defendant, and that such disposition of the matter would result in great prejudice to the parties. No such prejudice is shown, and the shifting of the mortgage lien is provided for by section 558.09. There should be partition in kind. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

558.02 SUMMONS; SERVICE.

Right of mortgagee of undivided interest as affected by a partition to which he was not a party. 24 MLR 708.

558.03 COMPLAINT.

Where husband and wife own real estate as joint tenants and the husband makes improvements with the consent of the wife, there is no implied contract entitling the husband to be reimbursed or protected therefor in an action in partition. In the absence of misconduct, one who advances money to another to enable him to purchase property has no lien therefor unless there is an express agreement showing an intention to charge the property with the debt. *Leach v Leach*, 167 M 489, 209 NW 636.

558.04 JUDGMENT FOR PARTITION; REFEREES.

Appeals in partition proceedings. 26 MLR 218.

558.06 DUTY OF REFEREES; REPORT; EXPENSES.

In division of property after annulment of a marriage, the findings sustain the judgment setting off to plaintiff and defendant equal portions in area of a tract of land owned by them as tenants in common, the portion set off to each party being proportionate in value to such party's contribution to the whole, and that set off to the defendant being the portion which he had improved. *Brandin v Swenson*, 163 M 506, 204 NW 468.

558.09 LIENS, HOW AFFECTED.

Where a tenant in common has given a mortgage upon his undivided interest in the fee, he cannot, in a partition suit, base error upon the action of the court in shifting the mortgage to the portion allotted to him. *Hunt v Meeker County*, 135 M 134, 160 NW 496.

Right of mortgagee of undivided interest as affected by a partition to which he was not a party. 24 MLR 707.

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558.11 COMPENSATION BECAUSE OF INEQUALITY.

Minnesota law of constructive trusts and analogous equitable remedies. 25 MLR 682.

558.14 SALE MAY BE ORDERED.

Trial court did not abuse its discretion in refusing to set aside partition sale because of defendant's claim of inadequate price, when none of such defendants, except one, opposed confirmation, and he testified to a value only slightly in excess of the sale price; the purchaser having paid the price, made improvements, and otherwise changed his position in reliance on the sale. *Jallo v Jallo*, 219 M 244, 17 NW(2d) 710.

558.16 PROCEEDS, HOW APPLIED.

Circuitry of lien; a problem in priorities. 19 MLR 139.

558.17 SALE OF REAL PROPERTY UNDER ACTION FOR PARTITION; NOTICE.

Whether a sale in partition can be postponed, when farm conditions are bad and the price of farm lands depressed, to await a more favorable time and, if so, whether the appeal presents a case calling for such relief, were not suggested to the trial court and therefore will not be considered by the appellate court. *Grimm v Grimm*, 190 M 474, 252 NW 231.

Under section 550.18 the validity of a sale in partition proceedings, which under section 558.17 is required to be made in the same manner as the sale of real property on execution, is not affected, either as to third persons or parties to the action, by defective notice of sale. *Jallo v Jallo*, 219 M 241, 17 NW(2d) 710.

558.19 PURCHASE BY PART OWNER.

Minnesota law of constructive trusts and analogous equitable remedies. 25 MLR 682.

558.21 FINAL JUDGMENT ON CONFIRMING REPORT.

See, notes under section 558.16.

Appeals in partitions proceedings. 26 MLR 218.

558.215 APPEALS FROM ORDERS OR INTERLOCUTORY JUDGMENTS TO THE SUPREME COURT.

See, *Grimm v Grimm*, 190 M 474, 252 NW 231, noted under section 558.17.

Service upon the adverse party of a notice of motion for the modification or setting aside of the court's interlocutory decree or order, coupled with a filing with the clerk of such notice of motion and proof of service, all within the 30-day appeal period, constitutes a timely application to the court although such motion was not noticed for hearing or actually heard until after the expiration of such appeal period. *Gelin v Hollister*, 222 M 339, 24 NW(2d) 497.

558.23 RECORD AND EFFECT OF CONVEYANCES.

When the recital in a partition deed concerning consideration is contractual, it cannot be varied by parol evidence. General rule as to when parol evidence is admissible to prove actual consideration outlined. *Thiem v Eckert*, 165 M 379, 206 NW 721.

558.27 FUTURE ESTATES.

Character of estate acquired. Effect of claims for lesser estates than estate held against. 31 MLR 90.

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558.28 WIFE MAY RELEASE.

Protection of the inchoate right of dower. 11 MLR 354.

558.29 INVESTMENT OF PROCEEDS.

Rights of persons disappearing. -9 MLR 89.

558.31 SHARE OF INCAPABLE PERSON.

See, Gelin v Hollister, 222 M 339, 24 NW(2d) 497, noted under section 558.215.